

FILED
U.S. DISTRICT COURT
DISTRICT OF NEBRASKA

2024 JAN 10 AM 11:45

OFFICE OF THE CLERK

**UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA
OMAHA DIVISION**

JOSEPH CLARK,
General Delivery
117 5th Avenue, S.W.
Minot, North Dakota 58701

Hon. _____

Hon. _____

PLAINTIFF,

Case no. 8:24 CV 10

v.

ALLIED MIDWEST, INC.,
828 North 133rd Street
Omaha, Nebraska 68154

and

MIDWEST INN, INC.,
4706 South 108th Street
Omaha, Nebraska 68137

and

DMK INVESTMENTS, LLC
2523 Farnam Street
Omaha, Nebraska 68131

and

BLACKSTONE HOTEL, LLC
3814 Farnam Street, #201
Omaha, Nebraska 68131

and

OM SRI SAI, LLC
3962 South 184th Avenue
Omaha, Nebraska 68130

**COMPLAINT FOR MONETARY,
INJUNCTIVE AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

RECEIVED

JAN 10 2024

CLERK
U.S. DISTRICT COURT

and

CHICAGO STREET HOTEL ASSOCIATION, LLC

801 East Second Avenue, #200

Coralville, Iowa 52241

DEFENDANTS.

I. Jurisdiction

This honorable court retains jurisdiction to adjudicate this case pursuant to **28 U.S.C. 1331** and **1343**. Jurisdiction is further conferred pursuant to **42 U.S.C. 12181**, the Americans with Disabilities Act.

II. Venue

Venue is proper in the District of Nebraska, Omaha Division, because all of the subject properties are located within this court's territorial jurisdiction.

III. Complaint

1. Each defendant listed herein owns and operates a hotel that is a place of public accommodation as defined by the Americans with Disabilities Act and the rules and regulations implementing that act. **28 C.F.R. 36.201(a)** and **36.104**.
2. As the owner of a place of public accommodation, each defendant listed herein is responsible for complying with the Americans with Disabilities Act.
3. Section 2, Chapter 242 of the Americans with Disabilities Act mandates that swimming pools at places of public accommodation have at least one pool lift; two (2) pool lifts is the pool is 300 linears or more. Said section and chapter further requires one lift for each hot tub.
4. Planning a trip to Omaha with a friend, and looking for a hotel that could accommodate this plaintiff, this plaintiff contacted each hotel listed below so that he could book a room. However, as described below, he was advised that hotels listed below are *not* in compliance with the Americans with Disabilities Act.
5. The defendant **Allied Midwest, LLC**, owns and operates the Sonesta ES Suites located at 6990 Dodge Street in Omaha. They have no lift for the pool.
6. The defendant, **Midwest Inn, Inc.**, owns and operates the Best Western hotel located at 4706 South 108th Street in Omaha. They do not have a lift for the pool or the hot tub.

7. The defendant, **DMK Investments, LLC**, owns and operates the Holiday Inn located at 1420 Cuming Street in Omaha. They do not have a lift for the pool or hot tub.

8. The defendant, **Blackstone Hotel, LLC**, owns and operates the Kimpton Cottonwood Hotel located at 302 South 36th Street in Omaha. They have no lift for the hot tub.

9. The defendant, **OM SRI SAI, LLC**, owns and operates the Quality Inn located at 9505 South 142nd Street in Omaha. They have no lift for the pool.

10. The defendant, **Chicago Street Hotel Association, LLC**, owns and operates the Home 2 Suites hotel located at 17889 Chicago Street in Omaha. They have no lift for the hot tub.

IV. Jury Demand

Plaintiff respectfully demands a trial by jury by the maximum allowable number of jurors on all issues triable by jury.

V. Relief Requested

WHEREUPON, this plaintiff respectfully requests the following relief:

DECLARATORY - a judgment declaring at the time this plaintiff commenced this action, each hotel listed herein was / is operating in direct violation of the Americans with Disabilities Act as described herein.

INJUNCTIVE - a permanent injunction pursuant to **42 U.S.C. 12188(a)(3)** and **28 C.F.R. 36.504(a)** which orders the subject properties to bring the properties into compliance with the Americans with Disabilities Act by installing permanent pool and hot tub lifts as required by sections **242.2** and **1009.2** of the 2010 standards which further directs the court shall retain jurisdiction for a period to be determined after the defendants certifies the pools and hot tubs are in full compliance with the Americans with Disabilities Act to ensure the defendants have adopted and are following an institutional policy that will in fact cause the defendants to remain in compliance with the Americans with Disabilities Act.

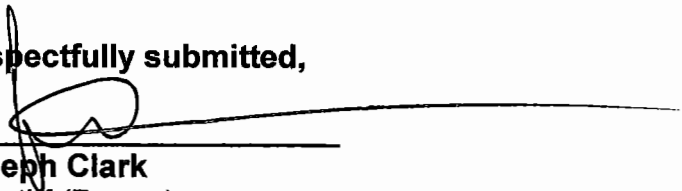
MONETARY- a reasonable amount of attorneys fees and costs.

FINES - this plaintiff respectfully requests this honorable court levy a fine of **\$75,000.00** for each initial violation, and **\$150,000.00** for any secondary

violation.

OTHER - Any and all other relief this honorable court may deem just and proper.

Respectfully submitted,



Joseph Clark
Plaintiff (Pro-se)
General Delivery
117 5th Avenue, S.W.
Minot, North Dakota 58701

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Joseph Clark

(b) County of Residence of First Listed Plaintiff Ward
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Pro-se, General Delivery, 117 5th Avenue, S.W., Minot, North Dakota 58701

DEFENDANTS

ALLIED MIDWEST, LLC, et al,

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input checked="" type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. 12181

Brief description of cause:

Hotels are in direct violation of the Americans with Disabilities Act

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.DEMAND \$
75,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE
01/07/2024

SIGNATURE OF ATTORNEY OF RECORD

Pro-se

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

